

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS (Springfield)

3 No. 3:18-cr-30001-WGY

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5  
6 UNITED STATES OF AMERICA

7  
8 vs.

9  
10 NIA MOORE-BUSH and DAPHNE MOORE

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13  
14 For Hearing Before:  
15 Judge William G. Young

16 Motion to Suppress/Final Pretrial

17  
18 United States District Court  
19 District of Massachusetts (Springfield)  
20 300 State Street  
Springfield, Massachusetts 01105  
Monday, May 13, 2019

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22  
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1 P R O C E E D I N G S

2 (Begins, 2:00 p.m.)

3 THE COURT: Good afternoon. Would counsel  
4 identify themselves.

5 MS. WAGNER: Good afternoon, your Honor,  
6 Katharine Wagner on behalf of the United States.

7 MS. BURKART: Good afternoon, your Honor, Amy  
8 Burkart for the United States.

9 MS. THOMPSON: Good afternoon, Judge Young,  
10 Attorney Linda Thompson for Daphne Moore.

11 MR. O'CONNOR: And good afternoon, your Honor,  
12 my name's Tom O'Connor and I'm here on behalf of  
13 Ms. Moore-Bush.

14 THE COURT: Good afternoon.

15 The Court has before it, and you may correct me  
16 once we've worked through these, really four separate  
17 matters, two of them may be dealt with summarily and two  
18 are quite substantive indeed.

19 The first is the motion, um, for a bill of  
20 particulars. No adequate showing has been made to  
21 warrant the issuance of a bill of particulars and that  
22 motion is denied without hearing, with one exception. I  
23 want to know, from the government, who the government  
24 contends are the co-conspirators, charged or uncharged,  
25 in the drug conspiracy and in the money-laundering

1 conspiracy? Those are the two overlapping conspiracies  
2 alleged here, isn't that right?

3 MS. WAGNER: That's correct, your Honor. And  
4 the government actually filed a letter under seal  
5 earlier in the case, around the time we did automatic  
6 discovery, that was sent to defendants that listed  
7 the indicted and -- well, unindicted co-conspirators in  
8 that -- in those two counts. So I think that that's on  
9 the record. I'd be happy to have my assistant go down  
10 and grab a copy of that if you'd like. But we have put  
11 it on the record.

12 THE COURT: Actually I would like, because I  
13 haven't focused on it, and for, um, the necessity of  
14 **PetruzzIELLO** and **Campaglia** rulings, I'd like to know how  
15 we're going to start here.

16 You should understand that, um, I take the  
17 evidentiary rulings in a conspiracy case very seriously  
18 and if I have admitted in evidence, um, communications  
19 from a person who -- and this is a finding by the judge,  
20 not -- it's not a directed verdict, who at the close of  
21 the government's case I don't find, by a fair  
22 preponderance of the evidence, is a co-conspirator, I  
23 must strike that evidence out.

24 Now if that's any more than completely peripheral,  
25 it becomes a very serious matter indeed because my

1 experience has been that you do not unring the bell with  
2 a jury. I make those statements not critical of anyone,  
3 just that you must be very careful when introducing  
4 co-conspirator hearsay, because I try to police that in  
5 a fair and careful manner.

6 All right. So that's the order on the bill of  
7 particulars.

8 Then there's more than one motion, but motions  
9 directed to wiretap evidence, do I understand from the  
10 government that the government does intend to use  
11 wiretap evidence in this case?

12 MS. WAGNER: We do, your Honor.

13 THE COURT: Against both defendants?

14 MS. WAGNER: Yes, your Honor.

15 THE COURT: All right. Those motions are  
16 denied.

17 What gives rise to these motions, I have to say,  
18 is an unfortunate predilection about which I have  
19 already complained to the United States Attorney and  
20 indeed all his predecessors, since they've been asking  
21 us for our views of law enforcement agents, that when  
22 they seek a wiretap, to list every possible name  
23 including -- and I don't say in this case, but I can  
24 remember cases where they're listing people "last name  
25 unknown," "first name unknown," and then they're seeking

1 to have a judicial determination as probable cause to  
2 believe that that person's committing a crime. That is  
3 an extremely unfortunate approach on the part of law  
4 enforcement.

5 When a wiretap is sought, what should be done is  
6 to list only the individuals in good faith whom the  
7 Assistant United States Attorney -- this shouldn't be  
8 surrendered to the law enforcement agencies, who the  
9 Assistant United States Attorney believes there is  
10 probable cause to believe that are committing the, um,  
11 crimes which would give rise to permission for a  
12 wiretap.

13 Indeed having read these motions -- I was not the  
14 issuing magistrate, it was Judge Mastroianni, but his  
15 practice is identical to mine, and I reviewed my own  
16 practices and I will tell you that in the last four  
17 years there have been only two wiretaps that I've issued  
18 without modification, all because the government  
19 always -- not always, in two instances they did not, but  
20 in every other instance where I've issued a wiretap I've  
21 narrowed it because they've asked for a judicial finding  
22 that there is then probable cause to believe that the  
23 person is committing the crimes that give rise to the  
24 wiretap. I don't do it and I see, in this case, that  
25 Judge Mastroianni didn't do it.

1           Now having said all that, and it needs to be said,  
2       it makes no difference here because he -- the warrant is  
3       amply supported for the wiretap that was issued, and  
4       once the wiretap is issued, the conduct of the officers  
5       here is, um, in my judgment under the controlling cases,  
6       is, um, not to be -- well it can be impugned, but it's  
7       perfectly appropriate here because of course the wiretap  
8       is a discovery device and what was discovered on the  
9       wiretap leads to further inquiry and the like. So the  
10      motion's denied -- those motions are denied.

11           Now that leaves us to the two motions that are of  
12      major significance here. And the first motion that I  
13      want to entertain and I'm eager for argument on is the  
14      motion having to do with the statements by Nia Moore-  
15      Bush. And so let me ask again, because we need to  
16      narrow what we're dealing with here.

17           Do you seek to introduce those statements in the  
18      trial?

19           MS. WAGNER: We would, your Honor.

20           THE COURT: And I take it that none of those  
21      statements are admissible against, um, Daphne Moore?

22           MS. WAGNER: That's correct, your Honor, and  
23      we would fashion them in such a way that they wouldn't  
24      run into any **Bruton** issues.

25           THE COURT: You're anticipating me and I

1 appreciate it. That means -- having dealt with **Bruton**  
2 issues in the past, there will obviously be no reference  
3 to her, Daphne Moore, nor will there be any reference to  
4 Jane Doe or some substitute for her, nor will there be  
5 any reasonable innuendo that a third -- well, Moore-Bush  
6 speaks of other people, but -- and other people, a  
7 number of whom are alleged co-conspirators. But I will  
8 be very careful that there be no reference, even by  
9 inference, to Daphne Moore, and the government should so  
10 understand it.

11 MS. WAGNER: Understood, your Honor.

12 THE COURT: All right.

13 So, Mr. O'Connor, my next question to you is I --  
14 let me tell you where I am in my analysis here.

15 I had read all the papers as is my want. The  
16 actual transcript of the interview accompanied by a CD  
17 was not received by me really until this morning. Again  
18 I'm not being critical of anyone, but I'm not going to  
19 make any determination today because voluntariness is at  
20 issue and I can see that my duty is not only to read the  
21 transcript but to listen to the actual inflections and  
22 the voices of the people on this CD. So assume that I'm  
23 going to do that.

24 MR. O'CONNOR: Yes, your Honor.

25 THE COURT: If I do that, I have to say I



1 don't see the need for an evidentiary hearing. I'm  
2 prepared on the law because your memorandum and  
3 affidavit certainly alerted me to it. But I ask you,  
4 are you pressing for an evidentiary hearing beyond the  
5 data that I have before me?

6 MR. O'CONNOR: Your Honor, I think it would be  
7 appropriate because, um, some of the issues that we  
8 raise in our brief -- perhaps some of the more central  
9 issues that we raise in our brief, have to do with the  
10 unrecorded portion of what happened that day, um, and  
11 what's reflected in the police report, not necessarily  
12 what's reflected in the recording or the transcription  
13 of the recording that I know has been submitted to the  
14 court.

15 THE COURT: All right. And what -- because  
16 while it is the government's burden of proof on  
17 voluntariness, from what sources do you want to  
18 introduce evidence? Whom do you want to call? Whom do  
19 you want to have called?

20 MR. O'CONNOR: Well that's a tough question,  
21 Judge, because it is their burden and I don't  
22 necessarily want to, um, assist them in meeting the  
23 challenge, but I think it's pretty well laid out in my  
24 brief. The real issue is, um, the circumstances around  
25 the waiver in the first place.

1           THE COURT: No, no, if we're going to argue it  
2 and I give you an evidentiary hearing, we'll argue it  
3 then. But if you don't mind, let's go back to  
4 Ms. Wagner.

5           While I'm certainly going to do what I just said I  
6 was going to do, isn't the better part of value for you  
7 to put on the evidence to persuade me, recognizing that  
8 I will have read and listened to all of this, such other  
9 evidence as you may wish to call to establish what -- I  
10 know what your position is. I don't need one. I'm  
11 thinking the better part of value is to have one.

12           MS. WAGNER: Your Honor, the government would  
13 be happy to produce Special Agent Meehan, he was  
14 unavailable today, otherwise I would have had him in the  
15 court just in case. He's out of state. But we would be  
16 happy to bring him on and essentially go over -- what  
17 the government would elicit from him would be  
18 essentially what is in their investigation that you  
19 would have had or will have the opportunity to read --

20           THE COURT: I see I have police reports, but  
21 that's not the same thing as the recorded -- I wasn't  
22 saying I'm accepting police reports for evidentiary  
23 weight -- I don't fault you in giving them to me, but  
24 you need a witness for that. So what you're saying is  
25 you'll produce such a witness?

1 MS. WAGNER: Essentially that's what I was  
2 saying, was that the expected testimony would be  
3 consistent with the police report that you have there.  
4 Additional details that the agent would be able to offer  
5 with respect to some allegations that the defendant has  
6 made with respect to availability of her --

7 THE COURT: I'm of a mind to give an  
8 evidentiary hearing and I'm of a mind to do it in  
9 Boston. I mean -- I mean I'll be out here for the  
10 trial. I have other cases. I mean you know this, it's  
11 no surprise, each time I come, that's a day. So let's  
12 see if we can't -- the Clerk will suggest a time in  
13 Boston where we -- where I will have read and listened  
14 to what I said I would, we'll then receive evidence and  
15 have argument on that motion.

16 (Pause.)

17 THE COURT: How about 9:00 next Thursday, the  
18 16th?

19 MS. WAGNER: That would be fine, your Honor.

20 THE COURT: And Mr. O'Connor?

21 MR. O'CONNOR: Yes, your Honor, that's fine.

22 THE COURT: All right. And Ms. Moore-Bush has  
23 every right to be present and so we're going to have to  
24 see to that. Very well, we'll schedule in Boston for  
25 that time. So that brings us -- but I won't entertain

1 any further argument on that.

2 So that brings us to the pole-camera motion and  
3 I've indicated that it's serious. What does -- does the  
4 government intend to use pole-camera evidence?

5 MS. BURKART: Yes, we do, your Honor.

6 THE COURT: As against both defendants?

7 MS. BURKART: That is correct.

8 THE COURT: All right. I think there are  
9 significant issues that, um, appertain to such evidence  
10 and on this it's the government's -- it's the defense's  
11 burden, I would think, to, um, ground a suppression  
12 motion and so I will hear defense counsel.

13 Who wants to start? This is not openended. You  
14 will understand that I have read your briefs, that's why  
15 I think it's a significant motion. I've read what I  
16 think are the significant Supreme Court and First  
17 Amendment cases. This is an evolving area of the law.

18 MS. THOMPSON: I agree.

19 THE COURT: So being succinct, I'm eager to  
20 hear your argument.

21 Ms. Thompson.

22 MS. THOMPSON: If you -- you're not inclined  
23 to have an evidentiary hearing, I take it then?

24 THE COURT: No, I don't what -- what's an  
25 evidentiary hearing going to give me?

1 MS. THOMPSON: Well, first of all, the  
2 information that we have about exactly how these cameras  
3 work, what kind of cameras they were, how they got to be  
4 where they are, those are not issues that are clear in  
5 the discovery, and when I was doing my research on this  
6 matter I did read, um, Judge Sorokin's --

7 THE COURT: Indeed.

8 MS. THOMPSON: His opinion.

9 THE COURT: As have I.

10 MS. THOMPSON: And I noticed that there was a  
11 substantial amount of information in that opinion about  
12 the kinds of cameras that were used. So that I think  
13 that the record of the kinds of cameras, the kinds of,  
14 um, if there was any audio, how they are controlled,  
15 where they are controlled from, I think those are all  
16 important issues.

17 THE COURT: Well --

18 MS. THOMPSON: In this case.

19 THE COURT: Well maybe I'm -- and perhaps I  
20 am, Ms. Thompson, but maybe I'm a little too simplistic,  
21 but let me set out the parameters, and the government  
22 should correct me as to any of any of these to the  
23 extent they're factual matters.

24 It seems to me that the erection of this pole  
25 camera involved no trespass on Ms. Moore's property, um,

1     that the cameras, um, or camera was able to make real-  
2     time recordings and could be operable from a remote site  
3     off the property, and had the capacity to zoom in. That  
4     this was indeed, um, continuous coverage, at least  
5     continuous coverage for portions of the surveillance,  
6     and was not simply a still photo taken periodically.

7             Well let me turn to the government and say are all  
8     those assumptions in fact the case? Ms. Barsky.

9             MS. BURKART: Yes, that's accurate, your  
10    Honor, there's no trespass, the utility pole is across  
11    the street. The affidavit, that is quoted by both the  
12    defendants and the government, does lay out that in  
13    real-time it was possible for agents to zoom and that it  
14    was continuous coverage for approximately 8 months.

15            THE COURT: That's right. But let me press.  
16    Did you zoom, are we going to see zoom pictures if I let  
17    this in?

18            MS. BURKART: Your Honor there have been  
19    produced in discovery, to the defendants, the images  
20    that were taken from the pole camera and they do show  
21    that when, um -- so I don't think that there is a  
22    factual dispute about it, that when it is in the  
23    unzoomed view it is Ms. Moore's driveway and a portion  
24    of the side of her house and that it is possible to zoom  
25    in and see things like license plate numbers and other

1 sort of information from that view, and both of those  
2 images have been produced in discovery and the  
3 government would expect to be using them at trial.  
4 There is no audio, your Honor.

5 THE COURT: All right, I'm -- I'm going to  
6 accept all those things factually and I don't see the  
7 need for any more detailed recitation.

8 Ms. Thompson, I'll hear you.

9 MS. THOMPSON: Thank you, your Honor.

10 We agree with the Court that this is an evolving  
11 area of, um, case law and, as the Court knows, we've  
12 relied heavily on the **Carpenter** case, which I know is  
13 not about a cameraman on an utility pole, but it does  
14 expand the, um, expectation of privacy to documents that  
15 are in the, um, control of third parties, that is there  
16 are new privacy expectations, I think, that arise in the  
17 **Carpenter** case, and in **Wurie** and **Riley** and **Jones** and the  
18 cases that we have cited.

19 So what we have here is a situation where  
20 unlike -- and I know that the, um, the cases -- some  
21 cases that have dealt with this have said that we live  
22 in an age of, um, surveillance cameras at businesses and  
23 places like that.

24 THE COURT: But this is not a security camera.

25 MS. THOMPSON: Absolutely not, it's not a

1 security camera, it's not a camera that a neighbor put  
2 up, this is the government. This is the government  
3 deciding to have a continuous coverage, which they can  
4 continually search, that is, um -- because they have  
5 this -- and I don't know how the search -- how to search  
6 this camera, the film, once it's been taken, but I'm  
7 assuming it's digitally searchable and that the  
8 government can go back and search again and again over  
9 this 8-month period, and that that 8-month period is,  
10 um, covering -- I don't know how much time they actually  
11 spent zooming in and zooming out, we would know that  
12 from a -- we could find that out. But that it's the  
13 kind of situation where I don't think the average person  
14 -- I know that certainly I would not expect you, Judge,  
15 or me to consent to having someone search, um, videotape  
16 the front of my house or the side of it.

17 THE COURT: Well, look, you're calling it a  
18 "search." Both of our houses, um -- and I haven't  
19 checked, Ms. Thompson, but both of our houses, I would  
20 imagine, are on Zillow and they're on Google Earth and  
21 there are pictures taken at different times. One of  
22 mine has someone out in the yard. Not that I check all  
23 the time. But the picture of the house is there.

24 MS. THOMPSON: Is it on Zillow?

25 THE COURT: I will admit mine is, um, and I'm



1 not selling.

2 (Laughter.)

3 MS. THOMPSON: Well I don't know because I  
4 haven't looked for mine. But I know that although  
5 Zillow is an enormous organization or business, it's not  
6 the government, and so while we might expect that  
7 Zillow, or Google Earth, will take a look at us every  
8 once in a while, we don't expect them to just focus on  
9 our home, and who comes and who goes and what time they  
10 come and what time they go, and who comes with them and  
11 who goes with them, and what time Ms. Moore goes to work  
12 and what time Nia Moore-Bush leaves the house and who  
13 she leaves with and what her children do, and who comes  
14 to pick up the children and who brings the children  
15 home. This is an extremely, um, it becomes extremely  
16 personal as it goes from day to day to day for an 8  
17 month period of time. And one of the things that makes  
18 it so personal, it's this permanent record, and it can  
19 be searched over and over again by the government.

20 There's no reason to think that they are  
21 necessarily through searching this, um, video feed for  
22 what Ms. Moore is doing, but I think that the ability of  
23 the government to see what you are doing, when you are  
24 leaving your house, who is coming to your house, what  
25 time you are leaving, what time you are coming back, is

1 really pretty -- an invidious invasion of privacy. They  
2 may not -- they may say that they don't want to use all  
3 of that, but the fact of the matter is they have the  
4 ability to use all of that.

5 THE COURT: But surely you've, I'm sure,  
6 defended cases and I have presided over cases where on  
7 mere suspicion there have been stakeouts, for  
8 instance -- I don't recall one of 8 months, but I had a  
9 drug case, and I use it in teaching evidence, where  
10 there was -- and it just comes to mind, where there was  
11 a stakeout of a fellow by the name of Patrick Cole, um,  
12 in one of my cases, and no opinion was ever written on  
13 it, and I just recall the facts of the case, a physical  
14 stakeout, um, a police officer in plain clothes located  
15 across the street, and what he was doing is just that,  
16 he was watching when Mr. Cole -- and he was living with  
17 a young woman, and when the young woman came and went,  
18 that's what they were doing.

19 Now that was before **Carpenter** and before cell  
20 phones -- if one can imagine that civilization in fact  
21 existed before cell phones, but law enforcement did its  
22 work and there was no challenge at all, that I recall,  
23 and everyone thought "Well, that's fine police work that  
24 they are in fact scouting out those premises." I have  
25 no -- and I still have no problem with that, law

1 enforcement has been doing that for decades. I take it  
2 your argument is the pervasiveness of the pole camera  
3 for 8 months, a pole camera that will do what Ms. Barsky  
4 forthrightly explains it will do, it can zoom in and the  
5 like.

6 MS. THOMPSON: Right, it's that 8-month period  
7 of time, because certainly when you read **Carpenter** and  
8 the cases that precede it, you understand how convenient  
9 it is for the government to stick a pole camera up -- to  
10 stick a camera on a utility pole and just have it run,  
11 and that saves manpower and person-power, however you  
12 want to deal with it. And of course I don't know if in  
13 the Patrick Cole case that person was sitting there in a  
14 car with a camera. And if that person was sitting --  
15 the law enforcement officer was sitting there with a  
16 camera, that might have raised a different issue for the  
17 court. But it was --

18 THE COURT: Well let me ask you this. There  
19 must be some period of time, without getting a warrant,  
20 that they can surveill suspicious premises? I mean  
21 won't you concede that?

22 MS. THOMPSON: Well, Judge, you know me well  
23 and I don't concede things very easily, but I do agree  
24 that the period of time in which somebody could do that  
25 without a warrant might be the period of time that

1       somebody would be able to stand there with a camera and  
2       take the pictures or sit in a car and take the pictures.  
3       But we all know that that's not going to happen for 8  
4       months.

5               THE COURT:   No, but the reason I ask that  
6       question, and I will ask it of the government, and  
7       whether or not we need an evidentiary hearing?  Since  
8       it's -- the government agrees it was operative for 8  
9       months.  It might be worthwhile knowing when the photos  
10      of evidentiary value originated, in other words were  
11      they in the first week, month, et cetera, in the 7th  
12      month and the like?  Do I have some line-drawing to do  
13      here?

14             MS. THOMPSON:  I think, um, from what I can  
15      tell by the discovery is that the, um, the camera had  
16      been up mid May, June, July, August, September, October,  
17      and I think it was October and later that they  
18      started -- that the photographs that are -- that the  
19      government intends to use.

20             THE COURT:   That the ones of evidentiary value  
21      appear to be late in the --

22             MS. THOMPSON:  Very late.  So there was a long  
23      period of time.  And I can tell you, I did not provide a  
24      huge hard drive, because I'm not going to look at all of  
25      those pictures.  I don't know whether there were --

1 THE COURT: No, I -- it's a proper question  
2 for the government and I will put it to them.

3 MS. THOMPSON: -- ambulances that came or --

4 THE COURT: So as I -- and this does not, in  
5 any way, shortchange your argument, you're in sort of  
6 the 1L best-case approach, but **Carpenter** is what you're  
7 really pinning your hat on, and you, um, point out that  
8 **Carpenter** is the most recent case and, um, is most  
9 persuasive for your point?

10 MS. THOMPSON: I think **Carpenter** is  
11 persuasive. I know that there are courts that have  
12 rejected this argument on **Carpenter**, there are courts  
13 that have accepted it, and that a lot of it hinges on,  
14 oddly enough, the location of the property. And so this  
15 property, 120 Hadley Street, is located in a quiet  
16 residential area. And of course everyone suggests,  
17 "Well, the neighbors can walk up and down there and see  
18 what's going on," and all of that, and that's what you  
19 expect in your neighborhood, you expect your neighbors  
20 to know what's going on in the neighborhood. But you  
21 don't expect them to be taking real-time videos of  
22 everything that goes on at your house.

23 So this is qualitatively quite different than  
24 having your neighbor snap a shot of you in your house or  
25 by Google Maps or Zillow, this is a record that is a,

1 um, permanent record of what went on at your house for 8  
2 months. And I think that that, um -- that **Carpenter**  
3 will -- I think that will be addressed again in the  
4 future. I think that 8 months is an incredibly long  
5 period of time to have a camera in place.

6 I haven't -- of course there are other things I  
7 expect to address the Court about with regard to long  
8 periods of time and searches, but I do think that when  
9 you have a recording which you can search, that you have  
10 created a search situation, and that a court would be  
11 inclined perhaps to say, "Well, you've shown me probable  
12 cause to think that on Thursday and Friday of every  
13 other week people come around, so I can give you two  
14 weeks or I can give you Thursday and Friday for two  
15 weeks." But this is just a free-for-all, this is just  
16 anything you want all of the time for 8 months.

17 And I think that the Fourth Amendment -- when I  
18 look at the cases that have dealt with **Carpenter** and the  
19 pole-camera issue, what I see is -- I don't suspect -- I  
20 know this, I expect -- I expect privacy at my house, and  
21 so I could put up a sign in the yard that says "Don't  
22 come on my sidewalk," but you could still take a picture  
23 of my house. I could, um --

24 THE COURT: Well, you don't need a sign  
25 because anyone can do that. For one thing, if I

1 understand my property law, they can walk on the  
2 sidewalk because it's an easement -- at least the  
3 sidewalk in front of my house is an easement of the  
4 town. We need children to walk on the sidewalk to get  
5 to school and the like. And I can't stop people from  
6 taking pictures of the house. And for a Fourth  
7 Amendment analysis, I don't have an expectation that I  
8 can stop them.

9 MS. THOMPSON: Judge, I have a sidewalk that  
10 leads from the public sidewalk up to my house.

11 THE COURT: Oh, I see what you mean.

12 MS. THOMPSON: And I could put a sign there  
13 saying "You can walk on that sidewalk, but not this one.  
14 Don't come up here."

15 THE COURT: You could because --

16 MS. THOMPSON: I could build a huge fence in  
17 front of my house. I could put bushes in front of my  
18 house. But people aren't really expected to do that,  
19 their home is their place of privacy. And so you're not  
20 expected to have to build a wall around your house,  
21 people can't even afford that.

22 THE COURT: The language of the Founders is  
23 still good today, everything is what is reasonable in  
24 our society.

25 I think I understand your argument. It's well-

1       briefed.

2               Mr. O'Connor, you join in this argument because  
3       the evidence would come in against your client as well.  
4       Do you have anything to add?

5               MR. O'CONNOR: Perhaps, your Honor, and I  
6       don't know if it would be helpful, but I'd like to add a  
7       few thoughts.

8               THE COURT: I'll be happy to hear you.

9               MR. O'CONNOR: So first with regard to, um,  
10      you know the comparison between security cameras and a  
11      pole camera, I think there's a couple of distinctions.  
12      One, security cameras are often visible. Part of the  
13      purpose sometimes of a security camera is to let people  
14      know that they're under surveillance so that they don't  
15      do anything --

16              THE COURT: I hear your -- you're arguing here  
17      now to the choir, it's the government who has cited some  
18      security camera cases. I don't think security cameras  
19      are the situation we have here. But it's not so much  
20      whether they're visible or invisible, a security camera  
21      is in position to provide security generally, that's why  
22      they're there, but here the government is targeting this  
23      premise, these premises, and evidently -- and they're  
24      certainly not going to argue to the contrary, because  
25      they believe there is suspicious activity of the people



1 coming and going from these premises, without probable  
2 cause, and that's where we start. So the security  
3 camera cases don't seem to this court to be apt.

4 I have a hard time saying it's a "search" because  
5 of course it's outside the close, it's on the public  
6 area, it's across the street. If you flew a drone up to  
7 the second-story window or something, that would be a  
8 different case, but that's not our case.

9 But go ahead.

10 MR. O'CONNOR: Yeah, so I do see what your  
11 Honor is saying, but I think the larger point that I was  
12 making is that with security cameras, knowing where they  
13 are, then with a limited purpose, you can preserve your  
14 -- or protect your own privacy by making choices about  
15 what actions you do. You don't have to be in the  
16 parking lot of the 7-11. Here they had no choice, this  
17 is where they live. This is the place that our Founders  
18 also recognized was our place of retreat, our place of  
19 peace, the place where we should expect to be free from  
20 the exercise of the arbitrary power of the government.

21 And so we now have a situation where the  
22 government can erect a discreet -- a hidden camera that  
23 has functions that are probably far beyond what a  
24 security camera does. This thing can be targeted  
25 clearly, at least at a minimum it can be zoomed. I

1 don't know if it has the capacity to pan or not, we  
2 don't know that, but it can zoom in and it can zoom in  
3 to a relatively high magnification. Again we don't know  
4 to what extent it can zoom in for purposes of  
5 magnification. I don't know whether it has the capacity  
6 to zoom in so tight on the front windows that now they  
7 can see what's happening in the living room. But it  
8 seems that --

9 THE COURT: I'm assuming "No," based upon what  
10 the record is and how Ms. Barsky answered my question,  
11 that they can't do that. They can zoom in to see  
12 license plates and at about that level of magnification.  
13 But I don't -- there's no evidence here that they could  
14 see the interior of one's home.

15 Correct, Ms. Barsky?

16 MS. BURKART: It's "Burkart," your Honor.

17 THE COURT: Ms. Burkart. Please forgive me.  
18 I do apologize, Ms. Burkart. And I thank you for the  
19 correction. But substantively the answer's "No," you  
20 can't see inside?

21 MS. BURKART: That's absolutely correct, your  
22 Honor.

23 THE COURT: All right.

24 MR. O'CONNOR: So the point that your Honor  
25 makes about zooming in to look at license plates, boxes

1 are frequently left at our mail boxes. Somebody  
2 conducting surveillance, traditional surveillance, would  
3 have to figure out a way to get up to that box to see  
4 what the return address is, to see who you're leaving it  
5 for the mail person or --

6 THE COURT: I don't know as they can see  
7 return addresses, but they might see that it's a Prime  
8 box, for instance. But someone with binoculars can do  
9 that.

10 MR. O'CONNOR: Perhaps, your Honor, but not  
11 every single day for every single box that would be left  
12 there for every single license plates that comes and  
13 goes for 8 months. These are the things of life. These  
14 are associations. The people who may come by to meet  
15 with us, they could be liaisons, they could be trysts,  
16 they could be things that would otherwise be genuinely  
17 absent from spot surveillance or surveillance down the  
18 street. And I would go further to say that in a  
19 residence like Ms. Moore had -- and this is a quiet  
20 suburban neighborhood, if there was a couple of people  
21 sitting there eating ham sandwiches and drinking coffee  
22 and sitting around with binoculars, again she would have  
23 the capacity to protect her freedom, and I think that  
24 that is lost here.

25 And I would say with regard to where **Carpenter**

1 appears to be going, and your Honor's comments about  
2 Zillow or Google Earth, you know I moved recently, so I  
3 have an experience with Zillow. You actually have the  
4 capacity to go on Zillow, claim ownership of the home,  
5 and take the photographs -- for example of the interior  
6 of your house, off of Zillow. So you have some control  
7 of that.

8 THE COURT: Well again it's all very well to  
9 use analogies in order to understand what we're talking  
10 about. No one's talking about interior photographs and  
11 the like and nor was I suggesting that.

12 MR. O'CONNOR: But what I'm saying, your  
13 Honor, is, you know, there's an expectation of privacy  
14 that comes along with that capacity. This is a  
15 collector of data and information --

16 THE COURT: But of course, just as you're  
17 arguing, but that's the interior of your home. They're  
18 not looking in the interior here.

19 MR. O'CONNOR: Right, and what's left is --  
20 there is something left though, your Honor, there's left  
21 a picture of the exterior of my home taken in an  
22 instant, it's one moment in time. My old house, the  
23 Google photograph from above the earth had the old  
24 above-ground pool that was taken down for years. So  
25 these are moments in time, they're snapshots, they don't

1 contain the same data and information.

2 And I think that what **Carpenter's** recognizing is  
3 that, as surveillance goes from a couple of detectives  
4 in a car using binoculars, when they can do it, to this  
5 technology that's ubiquitous that gathers so much and  
6 has the capacity to gather so much evidence, that if we  
7 don't do something to cabin the government's use of it,  
8 we lose our freedoms entirely, and our perception of --

9 THE COURT: Judge Sorokin wrote, very  
10 carefully, and I hold him in enormous high regard, that  
11 he was bound by the First Circuit's precedent in **Boch**.

12 MR. O'CONNOR: In **Boch** or **Bucci**, your Honor?

13 THE COURT: **Bucci**. I'm sorry.

14 MR. O'CONNOR: Your Honor, I think because  
15 **Carpenter** post-dates it and so --

16 THE COURT: It does.

17 MR. O'CONNOR: And so the Supreme Court's  
18 recognizing that. You know the First Circuit at that  
19 point in time is following Supreme Court precedent that  
20 talks about a reasonable expectation of privacy as it's  
21 evolved from --

22 THE COURT: You answered my question. And so  
23 in order to -- I'm going to -- if I go your way, like  
24 you're depending on **Carpenter**, I'm depending on  
25 **Carpenter**, because otherwise I'm bound by **Bucci**. Right?

1 MR. O'CONNOR: Yes.

2 THE COURT: Thank you.

3 All right, Ms. Burkart. And again my apologies, I  
4 do -- I do try to get people's names straight.

5 Would you answer the factual question, which was a  
6 supposition on Ms. Thompson's part, that the evidence  
7 you seek to produce comes in months when, 7 and 8?

8 MS. BURKART: Your Honor, I'm not actually  
9 certain particularly what photos we're going to use in  
10 this stage in the case. If --

11 THE COURT: But that would tend toward an  
12 evidentiary hearing. What can you tell me on that?

13 MS. BURKART: I don't think so, your Honor,  
14 because I think that the facts that are undisputed and  
15 the case law that is undisputed makes it clear that the  
16 government should be able to use images from any point  
17 during that time. **Bucci** was an 8-month period of time.  
18 And I believe that Judge Sorokin's analysis is correct,  
19 both pre and post **Carpenter**, and is controlling.

20 THE COURT: Why is it correct post **Carpenter**?  
21 I mean they're dependent on **Carpenter**. And I think --

22 MS. BURKART: Absolutely, your Honor.

23 THE COURT: And I think, analytically, rightly  
24 so, whether that works or not is yet to be seen.

25 MS. BURKART: **Carpenter** dealt with a very

1 narrow -- it had a very narrow holding and it dealt with  
2 a very different type of technology. So certainly I  
3 think there's no dispute among the parties that our  
4 world has changed quite a bit in recent years in terms  
5 of how technology works and what is captured and that  
6 certainly has some reasonableness -- I'm sorry, some  
7 Fourth Amendment considerations. But the threshold  
8 issue here is not changed by **Carpenter** because it is  
9 what is reasonable? Is this a search? What is a  
10 reasonable expectation of privacy? **Carpenter** does not  
11 change what is reasonable about your expectation of  
12 privacy in the exterior of your home.

13 Carpenter said very clearly that they were making  
14 a narrow holding about cellular information, location  
15 information that was historical, um, they were very  
16 specific about it, and I think for good reason. The  
17 **Carpenter** court talked about the evolution of that  
18 technology and how historical cell-site information has  
19 gotten more and more precise, and they said to the point  
20 where at this stage they view that the data that's  
21 available through historical cell-sight information to  
22 be much like a tracker, that you could give, for a long  
23 period of time, very detailed encyclopedic information  
24 about where someone went, and that that could extend  
25 into interiors of spaces, that that could show

1 information about, um, which places of worship they went  
2 to, their travels, and they were very concerned with  
3 that level of intrusion, a tracker-like device on  
4 someone for an extended period of time. And they  
5 actually went so far as to, you know, say it's not --  
6 it's any period of time, it's, you know, beyond 7 days  
7 was the issue in front of them on that. Why didn't they  
8 even need their holdings to say beyond the 6-day period  
9 of time? They thought that the threshold had been  
10 crossed. But they were very clear in **Carpenter** that  
11 that was the technology that they were talking about,  
12 that it was that increased ability to track people that  
13 they were concerned about.

14 And there had been a number of cases since  
15 **Carpenter** that have sought to apply the holding of  
16 **Carpenter** to a different set of technology, a different  
17 set of, um -- a different situation, and the courts have  
18 rejected that, um, pretty routinely. And in every case  
19 that I'm aware of in the pole-camera setting, the courts  
20 have rejected that. There is no post-**Carpenter** case  
21 discussing pole-camera technology.

22 **Vargas**, which was the case that was discussed by  
23 Judge Sorokin, it was raised by the defendants, was  
24 2014. I did not find any, nor did I see in the  
25 defendant's briefs any -- and they're welcome to correct



1 me if I'm wrong, but I've seen no extension of the  
2 **Carpenter** decision to pole-camera data. I think that's  
3 because pole cameras are really not the type of thing  
4 that they were concerned about in **Carpenter**, it's fairly  
5 old-school. Whether it can zoom or not? It's a type of  
6 surveillance, a technique that law enforcement has been  
7 using for a long period of time.

8 It would be a very significant and I think an  
9 unwarranted extension of **Carpenter** to take the idea that  
10 **Carpenter** embraced -- you know, privacy rights are  
11 something that we have to consider more carefully in the  
12 area of new technology, and extend that to pole cameras,  
13 which have been used by law enforcement for a very long  
14 period of time.

15 And so I think the holding in **Bucci** is  
16 controlling. I think, um, Judge Sorokin's very careful  
17 analysis shows that he was quite sympathetic to the view  
18 that this emerging technology is something that could be  
19 of concern later, but he said very clearly **Bucci**  
20 controls here, and I don't think **Carpenter** changes that.

21 I think as a threshold issue we continue to have  
22 is this a reasonable expectation of privacy? It's not a  
23 search if there's not a violation of the reasonable  
24 expectation of privacy. Objectively **Bucci** controls.  
25 They have not shown that. Subjectively none of the

1 defendants has put forward any type of affidavit or any  
2 type of information that suggests that subjectively they  
3 have demonstrated an expectation of privacy, again in  
4 that exterior of the home. Certainly some of this  
5 discussion has talked about the sanctity of the home,  
6 that's a serious Fourth Amendment concern, but there's  
7 no suggestion here that we have invaded that.

8 And one can imagine that if the technology were to  
9 become, you know, very significant, we were able to look  
10 inside homes and things like that, then those images, I  
11 would expect, would be the exact images the defendants  
12 would bring forward and say "This is a violation," but  
13 we don't see that here. We see the driveway and people  
14 coming and going from the driveway, the license plates,  
15 and sometimes you can see the drivers.

16 If there were a box or a series of boxes, your  
17 Honor, I would argue we could get that under mail cover,  
18 but that might be sort of an area that maybe we should  
19 take an evidentiary hearing, maybe we should look more  
20 closely. Is this some type of new technology that is  
21 really raising new concerns? We don't have that here.  
22 What we have is a failure to meet the threshold of a  
23 reasonable expectation of privacy, both objectively and  
24 subjectively, and nothing in **Carpenter** that overrules  
25 the holding in **Bucci**.

1           THE COURT: Don't think I'm going here, but  
2 let me just put it to you.

3           If I allowed this motion, in whole or in part, or  
4 allowed it for a period of the 8 months, that affects  
5 your whole case, doesn't it?

6           MS. BURKART: I think it's a significant  
7 impact, your Honor. As you know I've -- I've recently  
8 joined the case team and am getting up to speed in terms  
9 of the facts. I do think it's a threshold issue, though  
10 that doesn't have to be decided right here, and I do  
11 think it would be a line-drawing that's unwarranted  
12 under current case law if we were to say, you know, "We  
13 need to carve to this period of time or that period of  
14 time, this is reasonable, this isn't reasonable." I  
15 think the threshold issue under what is still good  
16 jurisprudence --

17           THE COURT: I understand that's your --  
18 believe me I understand your argument. I'm thinking of  
19 what may happen because you are the, um --

20           Do the wiretap warrants depend on it?

21           MS. BURKART: The wiretap warrants discuss the  
22 pole cameras as part of discussing why it is necessary  
23 to have the wiretaps. So obviously one of the  
24 exhaustion requirements --

25           THE COURT: So that the pole camera was not

1 sufficient?

2 MS. BURKART: Precisely, your Honor. And so  
3 that is actually the portion that's quoted here. And in  
4 some ways it cuts against the defendant's arguments that  
5 the pole camera is such a significant intrusion because  
6 what the defendant --

7 THE COURT: Because the wiretap intrusion  
8 requires the exhaustion of other things that you might  
9 do.

10 MS. BURKART: Precisely, your Honor. And it  
11 shows how limited the data that one can really get from  
12 a pole camera is. And it's where, I think, for instance  
13 the discussion of the one tree that partially obfuscates  
14 the view of the pole camera actually cuts to the  
15 government's position, is that, you know, this is on a  
16 utility pole across the street. And so when you're  
17 taking the position of, you know, what is reasonable for  
18 people to think is protected, what privacy interest is  
19 society prepared to recognize as reasonable? Knowing  
20 that it was obscured in part by a tree is something that  
21 actually shows that it was even less of an intrusion,  
22 um, than it might be had there been a full clear view of  
23 the entire exterior of the home. Again it really goes  
24 back to what objectively can one expect to be private  
25 about the exterior of the home.

1           THE COURT: All right. Thank you. I'm going  
2 to take the matter under advisement.

3           Since we're here together and since trial is in  
4 the fairly-immediate offing, let's cover those things  
5 which -- let's use this as a final pretrial conference  
6 and go over certain matters.

7           The trial is starting on Monday, the 10th of June.  
8 The government will, by the 20th of May, if they have  
9 not already done so, make all those disclosures which  
10 are required under Local Rule 116. The government will,  
11 by the 3rd of June, disclose its witness list. The  
12 defense will make the reciprocal disclosure by Wednesday  
13 the 5th of June. Any stipulations, motions in limine,  
14 and the like, will be filed by Friday the 7th of June.

15           I propose -- well, let me ask a question. With  
16 the case in its present posture, how long do you think  
17 it will take to try this case -- without holding it to  
18 you, either Ms. Wagner or Ms. Burkart?

19           MS. WAGNER: Your Honor, just to clarify, the  
20 Court will be running or the trial will be running for  
21 half days or until 1:00 or 2:00?

22           THE COURT: Yes. I was sort of thinking maybe  
23 9:30, but not going to lunch about 1:30, and maybe  
24 calling that a day.

25           MS. WAGNER: So 9:30 to 1:30. I think that

1 the government would be able to enter its case in chief  
2 well under -- between 2 weeks and 3 weeks, depending on  
3 cross-examination.

4 THE COURT: It was 2 weeks the last time I  
5 asked, now it's up to 2 or 3 weeks?

6 MS. WAGNER: Well it's 2 weeks, your Honor, we  
7 could do that, I'm just anticipating there might be  
8 extended cross-examination that the government can't  
9 anticipate. So for our case, we certainly could get it  
10 in by 2 weeks.

11 THE COURT: I find it hard to think that you  
12 will in fact use up 2 weeks.

13 As a practical matter, Ms. Thompson, Mr. O'Connor,  
14 you've tried these cases, how long do you really think  
15 we're going to take on this?

16 MS. THOMPSON: Well, I have to say, Judge,  
17 that, um -- before I address that, I wanted to address  
18 the government's motion for a protective order.

19 THE COURT: Oh, I had not addressed that.

20 MS. THOMPSON: Which I have opposed.

21 THE COURT: Oh, I see that, I see you've  
22 opposed it. I'm not sure I really understand it. I've  
23 not entered any such protective order.

24 MS. THOMPSON: And I am not getting discovery  
25 because of the motion for a protective order.

1 THE COURT: Well what discovery do you think  
2 you're entitled to that you're not getting?

3 MS. THOMPSON: Well I'm not getting  
4 information about cooperating witnesses, um, which --  
5 the way I read the local rules, Judge, is if there was  
6 going to be a motion for a protective order that was to  
7 be filed during that 28-day period so that I would know  
8 where I was going to, um -- I can't specify what I'm not  
9 getting because the government hasn't said in their  
10 motion what they're not going to give.

11 THE COURT: I'll rule promptly on that.

12 All right. Let's, um -- Mr. O'Connor, do you want  
13 to take a shot at the question I posed?

14 MR. O'CONNOR: Your Honor, I think that's  
15 probably a pretty accurate description.

16 THE COURT: A couple of weeks?

17 MR. O'CONNOR: Yeah, I think so. It could  
18 possibly bleed into that third week. I haven't tried a  
19 case in front of your Honor, so I don't know how fast it  
20 moves along.

21 THE COURT: Um, I hope I'm not terribly  
22 idiosyncratic, I -- most -- more than anything else I  
23 desire a fair and impartial trial, time is not that  
24 important, it's just we need to make effective use of  
25 the time. That's why I ask. It's a criminal case, I

1 can't hold people to time, and I do not.

2 I'll impanel 14 jurors, that means the government  
3 has 7 peremptories, the defense has 11. In a -- if both  
4 defendants go to trial, a multidefendant case, the  
5 objection of one is the objection of all, unless  
6 counsel, um, seek to take a different position and state  
7 the different position. So it's not necessary for both  
8 to object.

9 I'm open to questions about the conduct of the  
10 trial. And I will rule promptly on this protective  
11 order issue.

12 Questions by the government?

13 (Silence.)

14 THE COURT: Questions from the defense?

15 MR. O'CONNOR: None for Ms. Moore-Bush, your  
16 Honor.

17 MS. THOMPSON: I have a matter in which I  
18 would just like to briefly make a record, Judge, that is  
19 on the wiretap, which has been denied without a hearing,  
20 it is our position that Ms. Moore was intercepted at all  
21 times without a warrant and without probable cause.  
22 Every affidavit, um, says "We don't have probable cause  
23 as to Ms. Daphne Moore." Every application says "We  
24 lack probable cause as to Daphne Moore." She was  
25 intercepted throughout the entire part of the wiretap.



1 And I think that Judge Mastroianni made it clear that  
2 her conversations were not expected to be relative to  
3 the -- to one of the specified offenses, and they were  
4 not pertinent, could not be expected to be pertinent to  
5 those. And so I have a warrantless intercept as to  
6 Ms. Moore, her name was crossed out and her name  
7 thereafter was always put forward as someone as to whom  
8 they did not have probable cause on each of the three  
9 applications and each of the three affidavits.

10 THE COURT: Her rights are saved.

11 MS. THOMPSON: Thank you.

12 In addition, I have filed a motion for relief from  
13 misjoinder.

14 THE COURT: Why is there misjoinder with the  
15 case in its present posture?

16 MS. THOMPSON: Well Ms. Moore-Bush is charged  
17 with firearms offenses.

18 THE COURT: I understand.

19 MS. THOMPSON: And Ms. Moore is not charged  
20 with any firearm offenses.

21 THE COURT: I understand that.

22 MS. THOMPSON: And it's not clear from  
23 anything that we see in the indictment whether money  
24 laundering involves firearms offenses as well as  
25 narcotics. So --

1 THE COURT: I've -- the motion is denied.  
2 Your rights are saved. We'll have a fair trial.

3 All right. Questions on the part of the  
4 government?

5 MS. WAGNER: Yes, your Honor, I have not had a  
6 trial in front of your Honor before, so I just have a  
7 couple of small logistics questions.

8 THE COURT: Go ahead.

9 MS. WAGNER: The first is with respect to  
10 openings and closings --

11 THE COURT: 15 minutes a side. Well if two  
12 go, they both get 15 minutes, you get a half hour.  
13 Closings, they get a half hour, you get an hour.

14 MS. WAGNER: With respect to chawks --

15 THE COURT: That's not an invitation to use  
16 that time, that may be counterproductive, but it's your  
17 case to try.

18 MS. WAGNER: Thank you, your Honor.

19 With respect to using chawks in openings, how does  
20 the Court --

21 THE COURT: I expect you to have shown them to  
22 the other side --

23 MS. WAGNER: Of course, your Honor.

24 THE COURT: -- and I'll entertain objections  
25 prior to the opening, but they're perfectly fine, if

1       there's no objection.

2               MS. WAGNER:   And then the last issue I wanted  
3       to raise, your Honor, was how the Court wanted to handle  
4       transcripts?   My understanding is that the initial  
5       presentation of a transcript should not show the  
6       speakers' names, and then once a witness has testified  
7       about who is speaking on the recording, that it might be  
8       entered.   I just want to --

9               THE COURT:   I'm not so -- transcripts are not  
10       going to the jury.

11              They're speaking in English, aren't they?

12              MS. WAGNER:   They are, your Honor, it's just  
13       an aid.

14              THE COURT:   Yeah, it's just an aid.   So the  
15       aid can have your agent's interpretation of who's  
16       speaking and the like because they'll have the  
17       transcripts only while the tapes are being played and at  
18       no other time and I will give a cautionary instruction.

19              MS. WAGNER:   Excellent.   Thank you, your  
20       Honor.

21              THE COURT:   All right, hearing nothing else,  
22       we'll see you next Thursday, at least Mr. O'Connor, for  
23       the evidentiary hearing.

24              MS. WAGNER:   I'm sorry, your Honor, I did  
25       forget one thing.

1           How does the Court do jury selection? If you  
2           could just give a few seconds on it?

3           THE COURT: Yes. I do jury selection like  
4           this. I'll have the venire in the courtroom. You  
5           people will have given me what you think is appropriate  
6           as a precharge substantively and you will pose whatever  
7           questions -- you will in writing give me whatever  
8           questions you want me to ask. I will ask the questions  
9           I want to ask, which may include yours or not.

10          So I will introduce myself to the venire, ask them  
11          the questions, they will raise their hand if they would  
12          answer affirmatively. Then I'll have them up one by  
13          one, along with you, and I will inquire further of them  
14          to decide whether they should sit.

15          When I've made that determination, and they've  
16          stepped away, then if you disagree, either side, you  
17          will say, "Judge, he should be challenged for cause." I  
18          will rule. And if I decide to bring back someone I've  
19          excused, they won't have left the courtroom by that  
20          time, I will say "Oh, wait a minute, come back and sit  
21          down." Then when I have an indifferent panel, I'll fill  
22          the box with 14 jurors.

23          I'll have each of the jurors introduce themselves  
24          and tell us where the -- well they don't need to  
25          introduce themselves, but they'll tell us where they

1 work and where their spouse works, and what -- and in a  
2 few words what they do there. That way you'll get to  
3 hear them and see how they answer questions and the  
4 like.

5 When that's done, we'll approach the sidebar and  
6 you will exercise your peremptories. Then without  
7 filling the box the defense will exercise their  
8 peremptories. Then the, um, in the first round we'll  
9 excuse those people and fill the box with remaining  
10 jurors. And in the second round the defense will go  
11 first, so it's fair and so on and so forth.

12 The last two jurors picked are going to be the  
13 alternates, but they will not know it until the trial is  
14 over. I will pick the foreperson. I'm very strict on  
15 **Batson**.

16 Is that sufficient explanation?

17 MS. WAGNER: Yes, thank you, your Honor, that  
18 was very helpful.

19 THE COURT: All right.

20 Anything else? (Silence.) Very well.

21 MS. THOMPSON: Judge, are you committed to  
22 selecting the foreperson?

23 THE COURT: I am.

24 We'll recess.

25 THE CLERK: All rise.

1 (Ends, 3:00 p.m.)

2  
3 C E R T I F I C A T E

4  
5 I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,  
6 do hereby certify that the foregoing record is a true  
7 and accurate transcription of my stenographic notes,  
8 before Judge William G. Young, on Monday, May 13, 2019,  
9 to the best of my skill and ability.

10  
11 /s/ Richard H. Romanow 5-31-19

12 \_\_\_\_\_  
13 RICHARD H. ROMANOW Date  
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